89-1722

Case No.

Supreme Court, U.S.
FILED
MAR 16 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

DEBORAH JEAN SAPIA,
PETITIONER

V.

CHARTER MARKETING COMPANY, GEORGE YOUNG, EARL KIGHT, JR., CAPITOL CITY CREDIT COMPANY, JACK SMITH, CREDIT BUREAU SERVICES, FRANK MOZZICATO, HARTFORD HOSPITAL, RICHARD A. LAWSON, MARGE RAMSDELL, AND JOHN S. GUTMAN,
RESPONDENTS

and

CONNECTICUT NATIONAL BANK, JOHN F. STOCKINGER, AND OSWALD ANTHONY SHERWOOD,
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

DEBORAH JEAN SAPIA
50 BLACKMAN ROAD
HEBRON, CONNECTICUT
(203) 228-9610
PRO SE PETITIONER

TABLE OF CONTENTS

	Page
RULING ON MOTIONS TO DISMISS. . . . . DATED OCTOBER 11, 1988 U.S. DISTRICT COURT DISTRICT OF CONNECTICUT	1
RULING ON PENDING MOTIONS . . . . . DATED MARCH 8, 1989 U.S. DISTRICT COURT DISTRICT OF CONNECTICUT	60
ORDER DATED DECEMBER 18, 1989 . . . . . U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT	106
ORDER DATED FEBRUARY 7, 1990. . . . . U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT	112

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

DEBORAH JEAN SAPIA :

-vs- :Civil No. H-87-962

CHARTER MARKETING COMPANY et. al. : (PCD)

October 11, 1988

RULING ON MOTIONS TO DISMISS

Deborah Jean Sapia brings this action pro se alleging violations of the federal and Connecticut constitutions; violations of federal statutes respecting civil rights, employment discrimination, antitrust, and fair credit; defamation; and numerous other torts under state law. The amended complaint, in over 70 pages, sets out 21 purported causes of action Each cause is asserted against one or more of the 26 defendants, for a total of 302 separate counts in all. Some of the defendants are

former employers of the plaintiff;[1] others are credit reporting companies[2] officials of the Connecticut Department of Labor,[3] plaintiff's former attorneys[4] and her uncle[5]. The complaint recounts a series of events - roughly in reverse chronological order -- dating back to 1970 and continuing up through August 1985. No brief summary of these allegations is possible, but the gravamen of plaintiff's charges is that she has been the victim of a widespread conspiracy

---

1/Including defendants Charter Marketing Co; Connecticut National Bank; Hartford Hospital; Rolf H. Olson; Coburn & Meredith, Inc.; and John S. Gutman

2/Defendants Capitol City Credit Company; Credit Bureau Services; and Company X.

3/Defendants Donald E. Wasik; Leon G. Philbrick; and Samuel F. Petrus. Defendant Robert Langer is an assistant attorney General for the State of Connecticut

4/Defendants James L. Kestell and James Patrick Connolly.

5/Defendant Frank R. Mozzicato

to deprive her of employment and of the opportunity for employment. Beginning in 1975, plaintiff encountered difficulties obtaining and keeping employment. She charges her former employers with violations of her rights under the first and fourteenth amendments; sex discrimination in violation of Title VII, 42 U.S.C. § 2000e, et. seq.; engaging in an antitrust conspiracy to blacklist her with other employers; breach of her employment contracts; intentional infliction of emotional distress upon her; and defaming her to other potential employers and credit reporting agencies by providing derogatory credit and employment references. Some of these actions, plaintiff alleges, were authorized or sanctioned by state officials. Plaintiff also alleges that the employers or other defendants, including her attorneys and the state officials, frustrated her attempts to appeal an unfavorable decision by the Employment Security Division of the

Connecticut Department of Labor.

Defendants Wasik, Langer, Philbrick, Petrus, Charter Marketing Company, Young, Kight, Meredith, Coburn & Meredith, Kestell, and Mozzicato move to dismiss counts of the Complaint directed against them.6/

Motion to Dismiss Standard

In ruling on a motion to dismiss, all well-pleaded material allegations are taken as true and the complaint must be construed in favor of the plaintiff, drawing reasonable inferences in support of her claim. Cruz v. Beto, 401 U.S. 319, 323 (1972). A dismissal may not enter unless it appears beyond doubt that plaintiff can prove no set

6/Defendants Wasik, Langer, Philbrick, and Petrus ("the State defendants") move to dismiss the entire complaint as against them. Defendants Charter, Young and Kight (the "Charter defendants") also move to dismiss the entire complaint, as do defendants Coburn, Coburn & Meredith, and Mozzicato. Defendant Kestell moves to dismiss only plaintiff's negligence claim.

of facts in support of her claim which would entitle her to relief. Conley v. Gibson, 335 U.S. 41, 45-46 (1957). While the pleadings of a plaintiff acting pro se are held to a less stringent standard than those of attorneys, Haines v. Kerner, 404 U.S. 519 1971), they must at minimum allege a specific factual basis for relief sought. Thus, plaintiff is obliged to provide more than conclusory, vague, or general allegations of constitutional violations; she must allege specific instances of misconduct. See Black v. United States, 543 F.2d 524, 530 (2d Cir. 1976); Ostrerer v. Aronwald, 567 F 2d 551, 553 (2d Cir. 1977).

Statute of Limitations

Defendants move to dismiss plaintiff's constitutional, §1983, §1985, §1986, Title VII, defamation, and negligence claims as barred by statutes of limitations. The defense of a statute of limitations may be raised by a

motion to dismiss for failure to state a claim. Retail Clerks Union Local 648 v. Hub Pharmacy, Inc., 707 F. 2d 1030, 1032 n.1 (9th Cir. 1983). However, the motion may be granted only where it appears from the face of the complaint that the limitations period has run on plaintiff's claim and that plaintiff can prove no set of facts under the complaint which would toll the period and entitle her to relief. See Jablon v. Dean Witter & Co., 614 F. 2d 677, 682 (9th Cir 1980); Guy v. Swift & Co., 612 F. 2d 383, 385 (8th Cir. 1980); Rauch v. Day 576 F2d 697, 702 (6th Cir. 1978).

On the face of the complaint, it is clear that as to plaintiff's claims under §§ 1983, 1985, and the first and fourteenth amendments, the limitations period has expired. The appropriate statute of limitations to be applied to these claims is the three-year period established by Conn. Gen. Statutes §§ 52-577 for personal injury actions.

Williams v. Walsh, 558 F.2d 667 (2nd Cir. 1977); Diverniero v. Murphy, 635 F. Supp. 1531, 1534 (D. Conn. 1986); see Wilson v. Garcia, 471 U.S. 261, 273-275, 278 n. 38 (1985). Plaintiff's original complaint was filed Dec. 14, 1987. Thus, where plaintiff's complaint, on its face, cannot be based on conduct of a particular defendant which occurred after December 14, 1984, and injured her constitutional rights, such claims must be dismissed as to that defendant.

During times relevant to the complaint, defendant Wasik was employed as an assistant attorney general assigned to the Connecticut Labor Department. Complaint P.10. Plaintiff's only allegations involving Wasik are that he discussed her employment history with Young in May of 1983, Complaint P. 38, and that in July, 1983 he telephoned plaintiff and made "disparaging and intimidating remarks about her unemployment appeal then pending with the Labor Department. Complaint P. 54. While plaintiff

alleges that Wasik "authorized" harrassment of her by defendants Young and Kight during her employment by defendant Charter, she presents no specific allegations of fact to support that conclusion. See Koch v. Yunich, 533 F. 2d 80, 85 (2d Cir. 1976); Ellentuck v. Klein, 570 F. 2d 414, 426 (2d Cir. 1978) (conclusory allegations of concerted action insufficient). Even assuming plaintiff's rights were violated by Wasik in 1983, her allegations of isolated incidents in May and July 1983 cannot reasonably support any inference that Wasik committed or participated in, any act after December, 1984 which violated her rights.

Similarly, the complaint is silent with respect to any conduct by defendant Langer after March 1983, of defendant Petrus after June 1980, or of defendant Philbrick after July, 1982. Plaintiff claims that Langer, an Assistant Attorney General, discussed her employment problems with her in February 1983 and acknowledged that "wrongful action had

occurred and that he was empowered to pursue a remedy," but never responded to her March, 1983 letter requesting action. Complaint §56. Defendant Petrus was Assistant Director of the OSHA Division of the Labor Department. He allegedly met with plaintiff on three occasions, the last in June 1980, to discuss her employment problems at Connecticut National Bank, but fialed to take action on her behalf. Complaint §§127-130. Defendant Philbrick was an Appeals Referee in the Employment Security Division of the Department. He presided over plaintiff's unemployment appeal hearing in June 1982. He issued a decision adverse to plaintiff in July 1982. Complaint § 60-61.

The face of the Complaint shows that plaintiff's claims against Wasik, Langer, Petrus and Philbrick are time-barred. No reasonable inference can be drawn from plaintiff's allegations that any conduct of these defendants toward plaintiff continued through

December 1984, well over a year after the incidents described in the complaint.7/ Accordingly, plaintiff's direct claims under the constitution and her claims under § 1983 and §1985 are barred by the statute of limitations as to defendants Wasik, Langer, Petrus, and Philbrick, and are dismissed.8/ The dismissed claims are the only federal claims asserted against these defendants. Defendants are citizens of Connecticut, as is plaintiff; there is thus no diversity of citizenship upon which to base jurisdiction over the remaining claims based on state

7/Defendants have informed the court that Mr. Petrus died in Florida on January 17, 1984, and have attached a copy of his death certificate to their memorandum. Plaintiff concedes that Petrus' death deprives the court of jurisdiction over him. However, the information outside the pleadings is not relied on in determining whether the limitations period has run as to the other defendants.

8/The §1986 claim asserted against Petrus must also be dismissed. Section 1986 contains its own one-year limitations period which has clearly expired as to defendant Petrus. 42 U.S.C. §1986.

law and the action is dismissed in its entirety as to defendants Wasik, Langer, Petrus, and Philbrick. United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966) (where federal claims dismissed before trial, pendant state claims ordinarily should be dismissed as well.)

Defendant Kestell, an attorney, moves to dismiss plaintiff's negligence claim as brought "more than three years from the date of the act or omission complained of." Conn. Gen. Stat. §52-584. Plaintiff alleges that in November 1981 she retained defendant Kestell to provide legal assistance with her employment problems. Complaint P. 62-63. She claims that Kestell failed to assist or to advise her, and did not pursue an investigation of her case. Kestell represented plaintiff at her unemployment appeal hearing but, inter alia, allegedly was unprepared, failed to act on plaintiff's behalf, testified unfavorably to her, and prevented her

from testifying and entering evidence into the record. Complaint P. 65. Moreover, after an adverse decision on her appeal, rendered on July 13, 1982, Kestell allegedly did not return plaintiff's telephone calls or make himself available to appeal the decision. Complaint P. 66. Kestell argues that, since plaintiff's appeal was decided on July 13, 1982, and plaintiff did not engage him to represent her further, her action for negligence in the course of the representation is barred by 52 §52-584 and the passage of time. Plaintiff argues that she attempted to contact defendant regarding an appeal. However, even assuming that Kestell was negligent in failing to assist plaintiff in taking an appeal from the decision of the appeals referee, the negligent "act or omission" occurred, at the latest, when the time for plaintiff's appeal had run. Conn. Gen. Stat. § 31-249 provides that any appeal from the decision of an employment security

referee must be taken before the decision becomes final; i.e., within 22 days after mailing of the decision. See Conn. Gen. Stat. §§ 31-248-249. Plaintiff's negligence allegations relate solely to the unemployment proceedings and to Kestell's failure to assist her appeal from the unfavorable ruling of July 13, 1983. Thus, any negligent act or omission on Kestell's part relating to the appeal occurred long before December 14, 1984, and plaintiff's negligence claim is barred by § 52-584.

Plaintiff argues that disputed factual issues remain as to circumstances which could toll the statutes of limitations: "fraud, willful nondisclosure, deception, misrepresentation, fraudulent concealment, duress, advice of counsel justifying inaction, and due diligence." Plaintiff's Memorandum of Law in Opposition to Defendant Kestell's Motion at 1. Fraud amounting to intentional concealment of a cause of action in order to

induce delay in bringing suit tolls the accrual of the cause until the plaintiff could reasonably have discovered it. Conn. Gen Stat. §§ 52-595; see, e.g., In re Danmar, 43 B.R. 423 (D. Conn. 1984). However, plaintiff's complaint shows on its face that she was aware of both the necessity for an appeal to protect her rights and that Kestell had not responded to her communications regarding such an appeal. See Complaint P. 66. Plaintiff cannot escape the operation of the limitations period, clearly applicable on the face of the Complaint, by conclusory allegations of fraud in her memorandum. Plaintiff alleges that Kestell promised to provide legal services, but did not. Complaint P. 233. Such a promise was not a misrepresentation of fact and does not constitute fraud. Plaintiff does not identify any other statement, misrepresentation, or omission of fact, or advise of Kestell upon which she relied in delaying her lawsuit. See Dayco Corp. v. Firestone,

386 F. Supp. 546, 547 (N.D. Ohio 1974) (Plaintiff must allege actual act of concealment, not mere non-disclosure); cf. Rule 9 (b) (circumstances of fraud must be pleaded with particularity). Without at least identifying such statements or advice, she is not entitled to make a general inquiry through discovery. Accordingly, plaintiff's negligence claim, Count LXX, Complaint P. 232, is dismissed as to defendant Kestell.9/

Defendant Gutman moves to dismiss all claims asserted against him as barred by applicable statutes of limitation. However, defendant's memorandum addresses this issue only as to plaintiff's contract, tort, and slander claims against him and this ruling

---

9/Defendant Kestell's motion to dismiss does not address the other claims asserted against him by plaintiff. However, the pendent state claims, for which there is no basis for diversity jurisdiction are addressed infra.

is limited to those claims.

Plaintiff was employed by Gutman's firm intermittently from 1970 until 1977. Complaint P. 150-161. She alleges that Gutman discriminated against her by requiring her to perform tasks, or attend meetings, not required of male employees. She further alleges that she was compelled by this treatment to resign and that subsequently defendant Gurman "deliberately and willfully embarked on a malicious, vindictive course of action designed to prevent plaintiff from securing...employment and to punish plaintiff for asserting her rights." ID. Ps. 164-5.

As defendant contends, all claims arising out of plaintiff's employment by Gutman are now barred by statutes of limitation. Plaintiff's last contact with Gutman relating to employment was in 1979, eight years before this action was begun. Id. P. 162. Her tort and negligence claims are barred by the three year limitations periods established by Conn.

Gen. Stat. § 52-577 (action founded on tort) and Conn. Gen. Stat. §§ 52-584 (negligence). Any contract-based claims are barred by Conn. Gen. Stat. §§ 52-581 (3-year limitation on action on oral contract) and Conn. Gen. Stat. § 52-576 (6-year limitation on action on written contract). While plaintiff argues that the limitation periods are tolled by fraudulent misrepresentation or concealment on the part of defendant Gurman, the allegations of fraud are insufficient on their face to permit such tolling. There is no allegation of a specific misrepresentation or affirmative act of concealment by defendant.10/

10/For example, plaintiff claims that Gutman promised to pay her employment benefits, insisted that the requirement that she attend extra functions was a normal and reasonable condition of her employment, and promised to provide favorable references. These statements are either unkept promises or mere expressions of opinion, certainly they do not amount to representations of fact which could support a claim of fraud. Moreover, since plaintiff states she was forced to resign from Gutman's employ by his discriminatory behavior, she cannot claim that she relied upon his representations after that time.

Accordingly, plaintiff's contract, negligence, intentional infliction of distress, and interference with contract claims are dismissed as barred by statute of limitations. (Counts CCXCVII, CCXCVIII, CCXCIX, and CCC.) Plaintiff argues that defendant's conduct after 1979 constituted slander and libel, which have continued until the present. She claims that defendant Gutman has given, or is giving, false and unfavorable references to employers and emplcyment agencies with respect to her. Complaint Ps. 165-66. She does not allege any specific communication, its contents, its date, or the recipient. Thus, the complaint alleges continuing defamatory communications in a conclusory manner. While it would permit a showing that such communi-

---

10/ (continued)Plaintiff's attempts to plead fraud are an obvious, but insufficient, effort to escape the effects of the statutes of limitation, clear on the face of the complaint.

cations occurred within the two-year statutory limitations period of Conn. Gen. Stat. § 52-597, it does not allege any specific communication within the statutory period which would qualify as defamation. Thus, the libel and slander claims must be dismissed because of the failure to allege a specific defamation within the statute of limitations. It may be that such allegations can, in compliance with Fed R. Civ. P. 11, be pleaded. As of now, they are not and so long as they are not the conclusory allegations do not permit the complaint to stand against the defense of the statute of limitations. Accordingly, the motion to dismiss is granted as to Counts CCXCIV, CCXCV, and CCXCVI.

Title VII Claims

Defendants Meredith and Coburn & Meredith move to dismiss plaintiff's Title VII claims,

42 U.S.C. § 2000e, et. seq.11/ Defendants argue that because plaintiff never filed a timely administrative charge of discrimination with the appropriate state agency, the Connecticut Commission on Human Rights and Opportunity ("CHRO"), or with the Equal Employment Opportunity Commission ("EEOC"), and has never received a right to sue letter from the EEOC, there can be no jurisdiction over her Title VII claim. See 42 U.S.C. § 2000e-5(f)(1); Carey v. New York Gaslight, 598 F.2d 1253 (2d Cir. 1979), aff'd, 447 U.S. 54 (1980). The timely filing of an administrative charge and the receipt of a right to sue letter are not jurisdictional prerequisites to a Title VII action. See Zipes v. Trans World Airlines, 455 U.S. 385 (1982). However, timely filing and a right-to-sue letter are statutory con-

11/Defendants Charter, Young, Kight, and Gutman have made similar motions which will not be discussed separately.

ditions precedent to such an action, which can be excused only on equitable grounds. See Id. at 393; Bradley v. Consolidated Edison Co. of New York, Inc., 657 F.Supp.197, 203 (E.D.N.Y. 1987); Hladki v. Jeffrey's Consolidated, Ltd., 652 F. Supp. 388, 392 (E.D.N.Y. 1987). Compliance with such conditions precedent must be pleaded, at least generally. Hladki, 652 F. Supp. at 393,n.11; Rule 9(c).

Plaintiff's complaint mentions no administrative filings nor any right-to-sue letter. It does not allege satisfaction of statutory conditions precedent to suit. It is, therefore, defective and subject to dismissal on those grounds. See Hladki, 652 F. Supp. at 394 (dismissed for failure to comply with Rule 9(c) in absence of allegations as to right-to-sue letter). Plaintiff's memorandum represents that she did "contact" the CHRO and EEOC with her grievances and that "representatives of each body said, in essence,

that it surpassed their scope and capabilities and that plaintiff should 'get a lawyer.'" Plaintiff's Memorandum in Opposition to Defendant Mozzicato's Motion at 1 (May 5, 1988). She states that the agencies to no action and "refus(ed) to provide plaintiff with proper paperwork." Id. However, there is no showing that plaintiff has received a right-to-sue letter or has attempted to obtain one.

Moreover, plaintiff was last employed by defendant Gutman in 1977, by defendant Coburn & Meredith in 1978, and by defendant Charter Marketing in 1985. Thus, even if plaintiff did file an administrative charge and received a right-to-sue letter, the statements in plaintiff's memorandum give no hint whether plaintiff filed any charge within 300 days of the alleged discrimination, 42 U.S.C. § 2000e-5(f)(1). Plaintiff's representations do not suggest compliance with the statutory conditions for suit, nor that equitable considerations might excuse those

requirements. In particular, plaintiff's general representation that she contacted the administrative agencies does not distinguish among the numerous defendants against whom Title VII claims are raised, nor among her various claims of discriminatory conduct occurring over an eight year period. Only sheer speculation would permit the conclusion, as to any particular defendant or claim, that plaintiff has met statutory requirements as to her Title VII claims. Despite plaintiff's pro se posture, permitting her claims to stand with such deficiencies would require indulgence in speculation. It is more appropriate to dismiss the Title VII claims with leave to amend to correct the deficiency, if possible. Consistent with her obligations under Rule 11, Fed. R. Civ. P.[12], on or before October 31, 1988,

---

12/Rule 11, which applies to pro se parties as well as to counsel states:

> Every pleading, motion, and other paper of a party represented by an

plaintiff may amend the complaint to allege compliance with the statutory requirements with respect to specific defendants and claims. Such a pleading would, at minimum, (1) speicfy any charges filed by plaintiff with the EEOC and/or CHRO and the date, persons name , and conduct complained of

---

attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. ... The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. ...If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a sanction, which may include an order to pay to the other party

in each charge; (2) specify the date of any right-to-sue notice received by plaintiff in connection with such charges; and (3) to the extent no timely charge was filed, or no right-to-sue notice received, or suit was not filed within the 90-day period, specify the facts, circumstances and conduct of each defendant and/or administrative agency which plaintiff contends justifies excuse or modification of these requirements. Accordingly, plaintiff's Title VII claims are dismissed without prejudice as to all defendants, for fialure to comply with the statutory requirements and with the minimum pleading requirements of Rule 9(c), Fed. R. Civ. P. Hladki, 652 F.Supp. at 394.

> or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

(Emphasis added).

Antitrust Claims

Defendants Charter, Young, and Kight move to dismiss plaintiff's Sherman Act claims for failure to state a claim upon which relief can be granted. Rule 12(b)(6). Defendants argue that plainitff has not alleged an antitrust injury sufficient to confer standing to assert a claim under 15 U.S.C. §§ 4 and 16, which authorizes private suits for violation of the federal antitrust laws. See Cargill, Inc. v. Monfort of Colorado, Inc., 107 S.Ct. 484, 491 (1986). In order to bring an action under either § 4 or § 16, a private plaintiff must allege threatened loss or damage "'of the type that the antitrust laws were designed to prevent and that flows from that which makes the defendants' acts unlawful.'" Id., quoting Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 488-89 (1977). "(O)nly harm stemming from a reduction in competition

qualifies as injury cognizable under the antitrust laws." Adams v. Pan American World Airways, 828 F.2d 24, 26 (D.C. Cir. 1987), cert. denied, 108 S. Ct. 1225 (1988). The law protects competition, not competitors. Brown Shoe Co. v. United States 370 U.S. 294, 320 (1962). Plaintiff has alleged that defendants' harassment and discriminatory treatment compelled her to resign from their employ, harmed her reputation, and rendered her unemployable. See Complaint P. 48-49. Plaintiff's loss of employment and diminished reputation are injuries personal to her, not injuries to competition, the public, or the market. She does not allege any effect on competition, or on any market in which defendants operate. Plaintiff was not defendants' competitor, she was their employee; her termination is not alleged to be the result of any scheme or agreement to reduce competition for defendants' services or products. Even if defendants' alleged consp-

iracy restricted the demand for her own services, such an effect could not, by itself, constitute the requisite antitrust injury. See Daley v. St. Agnes Hosp., Inc., 490 F. Supp. 1309, 1317-18 (E.D. Pa. 1980) (plaintiff alleging he was blacklisted by former employer must show anticompetitive effect other than with regard to labor; Sherman Act does not provide remedy for Title VII claims). Work as an employee of another is not an independant business enterprise or property and thus the loss of employment is not an injury protected by 15 U.S.C. § 15. Plumbers & Steamfitters Local 598 v. Morris, 511 F. Supp. 1298 (E.D. Wash. 1981); see also 15 U.S.C. § 17 ("labor of a human being is not a commodity or article of commerce" within meaning of Sherman Act.) Accordingly, plaintiff has not alleged an antitrust injury.

In addition, plaintiff's claims under Section 2 of the Sherman Act must be dismiss-

ed because she has failed to allege a necessary element of a Section 2 violation: the possession of monopoly power in the relevant market. California Computer Prod. v. I.B.M., 613 F 2d 727, 735 (9th Cir. 1979); see United States v. Grinnell Corp., 384 U.S. 563, 570-71 (1966). Monopoly power is defined as "the power to control market prices or exclude competition." Greyhound Computer Corp. v. I.B.M., 559 F2d 488, 496 (9th Cir. 1977). Plaintiff has made no allegation as to the relevant product and geographic markets, nor alleged that defendants have a predominent share. See Grinnell Corp., 384 U.S. at 571, 575 (discussing relevant product and geographic markets). Indeed, the complaint does nothing more that attach the label "monopoly" to the actions of the defendants; it does not identify the entities with which they are aleged to have conspired, or the business in which those entities are

engaged.[13]/ Moreover, the claim that, even collecticely, the defendants could possess monopoly power in the general market for employment in Connecticut such that they could control wages or exclude competition is patently frivolous. Accordingly, defendants' motion to dismiss the antitrust counts is granted.

First, Fifth and Fourteenth Amendments

Defendants Charter, Young, Kight, Coburn & Meredith, and Meredith move to dismiss plaintiff's direct claims under the first, fifth and fourteenth amendments to the constitution for failure to state a cuase of action. Plaintiff does not oppose the motion as to defendants Coburn & Meredith.

13/As defendants Young and Kight were employees of defendant Charter, it is doubtful that their contacts with eachother could support an allegation of conspiracy to restrain trade. No allegations are made that these defendants contacted or communicated with other potential employers of plaintiff.

Accordingly, the constitutional claims are dismissed as to those two defendants.

Defendants Charter, Young & Kight argue that the direct constitutional claims must be dismissed because the complaint does not adequately allege facts showing defendants' conduct constituted state action. It is well settled that the constitutional guarantees of free speech, due process and equal protection are restraints only upon government action, and not purely private conduct. Rendell-Baker v. Kohn, 457 U.S. 830, 837 (1982). "A state normally can be held responsible for a private decision. . .only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the state. . . . Mere approval of or acquiescence in the initiatives of a private party is not sufficient to justify holding the state responsible for those initiatives under terms

of the Fourteenth Amendment." Blum v. Yaretsky, 457 U.S. 991, 1004 (1982) (emphasis added; citations omitted) (finding no state action in suit under § 1983). Plaintiff does not allege that defendants stand in a symbiotic relationship with the state or that they perform a public function such that defendants should be considered instrumentalities of the government. See, e.g., Janusaitis v. Middlebury Voluntary Fire Dept., 607 F. 2d 17, 23, (2d Cir. 1979) (state action where volunteer fire company was"intertwined" with government entity and performed traditionally exclusive government function); Wagner v. Sheltz, 471 F. Supp. 903, 907 (D. Conn. 1979).

Here, plaintiff's sole factual allegation of state involvement in the conduct of defendants Charter, Young, and Kight is her claim that defendant Wasik, a state official, communicated false and defamatory information to defendant Young prior to her employment

by Charter. Complaint P. 38. Despite this alleged defamation, plaintiff was hired by Charter. Complaint P. 36. Young and Kight allegedly subjected plaintiff to harassment and discrimination while she was employed by Charter, including instructing plaintiff's coworkers not to cooperate or socialize with her and giving her unreasonable work assignments. Complaint P. 42. In addition, she alleges that "acting upon the unlawful authorization of, or with the culpable knowledge and sanction of, defendant Wasik and/or other unknown, Connecticut Department of Labor officials, ... defendants Young and Kight each engaged in a course of action... designed to harass, humiliate and frustrate plaintiff in the performance of her job duties in a calculated effort to remove her from her position by forcing her involuntary resignation." Complaint P. 47.

Plaintiff's vague and general allega-

tion of "authorization" does not meet the level of particularity which has been required in order to state a cause of action for violation of constitutional rights. See Ellentuck, 570 F. 2d at 426 (conclusory allegations of concerted action); Holt v. Continental, 631 F. Supp. 653, 659 (D. Conn. 1985) (unsupported allegation that defendant acted in concert with state officials insufficient). Plaintiff alleges that the private defendants discriminated against her and forced her to resign her position at Charter. However, there are no facts alleged in the Complaint from which it could be inferred that defendants were thereby exercising a power "'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" Monroe v. Pape, 365 U.S. 167, 184 (1961), quoting United States v. Classic, 313 U.S. 299, 326 (1941) (defining action "under color of state law"). Plaintiff has

not alleged any contact between state officials and her employers other than the alleged defamatory statements of Wasik to Young; nor does she allege that Wasik compelled or influenced Young to take any action, see Rendell-Baker, 457 U.S. at 841, or reached an understanding that she would be the target of discrimination. Indeed, no employer could reasonably act on the belief that a state official was empowered to require gender discrimination or harassment against an employee. Nor is there any allegation that defendant Charter had a "symbiotic relationship" with the state such that the state or its officials profited from Charter's conduct. Id. at 842-43; Janusaitis, 607 F2d at 23. Moreover, even taking as true plaintiff's conclusory allegation that defendants acted with the "authorization . . . or culpable knowledge and sanction of" Wasik or other state officials, the complaint would not be sufficient to allege

state action. A state official's "(m)ere approval of or acquiescence in the initiatives of a private party," standing alone, cannot support a finding of state action. Blum v. Yaretsky, 457 U.S. 991, 1004-05. There must be some allegation, not made here, that the defendants willfully participated in joint action with the state or its agents before a constitutional claim would lie. See, e.g., Annunziato v. The Gan, Inc., 744 F. 2d 244, 250-51 (2d Cir. 1984). Accordingly, plaintiff's constitutional claims are dismissed as to defendants Charter, Young, and Kight.

Statutory Civil Rights Claims

Defendants Charter, Young, and Kight also move to dismiss plaintiff's claims under 42 U.S.C. §§ 1983, 1985(2) and (3), and 1986 for failure to state a cause of action.

Defendants statutory civil rights claims are based on the same factual allegations of defendants' conduct as her claims

under the first, fifth, and fourteenth amendments. Her § 1983 claim alleges that defendants' actions "done under color of state law, comprised a substantial and injurious deprivation of plaintiff's civil rights, privileges, and immunities as secured by the United States Constitution and laws." Complaint P. 178. The § 1985 claims allege that defendants' actions constituted a conspiracy to "discriminat(e) against plaintiff because she is a woman and because of her advocacy of women's rights in the workplace" and to "impede, hinder, obstruct or defeat the due course of justice with a purposeful intent to discriminate against the plaintiff and to deny her the equal protection of the law." Complaint P. 179-180.

Neither the § 1983 nor § 1985(3)creates any substantive rights; both merely provide a civil remedy for violations of certain otherwise defined federal rights. Chapman

v. Houston Welfare Rights Organization, 441 U.S. 366, 372 (1979); cf. Traggis v. St. Barbera's Greek Orthodox Church, No. 87-9056, slip op. at 4722 (2d Cir. June 30, 1988) (§ 1985(3) provides no substantive rights, declining to decide whether statute provides remedy for conspiracy to deprive person of equal protection of state law.) To state a cause of action under § 1983, plaintiff must allege facts showing that the defendants acted "under color of state law." 42 U.S.C. § 1983. As discussed above in relation to state action, plaintiff has not alleged sufficient state involvement in defendants' conduct to meet this requirement. Her bare, unsupported allegation that the defendants' conduct was "authorized" by state officials is inadequate to show defendants were "'willful participant(s) in joint activity with the state,'" Adickes v. S.H.Kress & Co., 398 U.S. 144,152 (1970), quoting United States v. Price, 383 U.S.787, 794, (1966). Defendants are

private citizens who acted in their capacity as her employers and not pursuant to state law or in concert with state officials.

Moreover, since the plaintiff has not adequately alleged state action sufficient to state a claim for violation of the first, fifth, or fourteenth amendments, the § 1985 (3) claim cannot be based upon any claim of constitutional violation. Nor can a claim under § 1985 (3) be based upon plaintiff's allegations of sex discrimination. Section 1985 (3) does not provide a remedy for a conspiracy between private persons to discriminate on the basis of gender or to otherwise violate Title Vii. Novotny, 442 U.S. at 378 (no remedy for Title VII violations); see id. at 384 (Stevens, J. concurring) (§ 1985 (3) provides remedy only for violations of constitutional, not statutory rights). Accordingly, plaintiff's claims under § 1983 and § 1985 (3) are dismissed.

Defendants Charter, Young, and Kight

argue that plaintiff's § 1985 (2) claim must be dismissed because there is no allegation that they were successful in impeding her access to the state unemployment procedures or the courts or otherwise obstructing justice. The statute provides a civil action against "two or more persons who conspire for the purpose of impeding, hindering, obstructing, or defeating ... the due course of justice in any state or territory, with intent to deny any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws." 42 U.S.C.§ 1985(2). This does not give plaintiff a cause of action merely because she did not prevail in the state proceedings, or because she was the victim of harassment or discrimination, but only if defendant's conduct precluded her opportunity to have her claim decided in the state pro-

ceedings. Plaintiff must only allege that the conspiracy existed and that she suffered injury as a result of an act done in furtherance of the conspiracy.. See 42 U.S.C. §1985 (3). Paragraphs 40-44 of the complaint allege that defendant Young told plaintiff that "they would let you work if you drop your case;" that after plaintiff filed her unemployment appeal, her working conditions at Charter deteriorated and she was singled out for discriminatory treatment; and that after Kight replaced Young as her supervisor, the discrimination continued. Plaintiff also alleges that the discrimination compelled her to resign. Even taking the allegations as true, an agreement to obstruct plaintiff's access to the unemployment procedures, or to hinder her appeal, cannot be inferred merely from Young's remark, which was made before the appeal was begun. Plaintiff does not identify the nebulous "they" whose desires Young was reporting, nor what possible motive

the Charter defendants could have to seek the abandonment of her unemployment dispute. While plaintiff claims that defendants Young and Kight harassed and discriminated her, she does not allege that defendants acted in concert with the prohibited purpose, i.e., to obstruct her access to the state procedures. Rather, she alleges that they sought to remove her from her position by forcing her to resign. Complaint P. 47.

To state a claim for violation of the civil rights laws, plaintiff must allege more than vague, conclusory allegations of conspiracy. Here plainitff has made what is essentially a claim of Title VII employment discrimination. Even were a conspiracy involving defendants to discriminate against her established, she has provided no nexus between that alleged conduct and her access to the state unemployment procedures or courts. She has not alleged any negative effect on her access to those procedures or

that she was prevented from invoking them, or any purpose on defendants' part to do so. Absent such a nexus and improper purpose, there can be no violation of § 1985(2). Accordingly, defendants' motion to dismiss the § 1985(2) claim is granted.

The charter defendants also move to dismiss plaintiff's § 1986 claim as barred by the one year statute of limitations provided in that statute. Section § 1986 provides that "no action...under this section shall be sustained which is not commenced within one year after the cause of action has accrued." Plaintiff alleges that harassment and discrimination by defendants Young and Kight compelled her to resign her employment at Charter on August 23, 1985. The complaint is devoid of allegations of conduct by any of the Charter defendants after that date; nor are the Charter defendants alleged to have discriminated against plaintiff after she had left Charter's employ. As to the allegations

of conspiracy and discrimination, the § 1986 claim is barred.

Plaintiff argues that discovery should be permitted as to facts which might permit equitable tolling of the statute of limitations, such as fraudulent concealment or misrepresentation of her cause of action. However, plaintiff does not allege that any of defendants' conduct was concealed from her; indeed, she claims that she felt compelled to resign by the open harassment and discrimination allegedly practiced upon her by defendants. Complaint P. 48. She has not suggested how any tolling doctrine might conceivably apply or what discovery could possibly reveal; nor has she specified any material fact which was affirmatively misrepresented or concealed from her. She relies on conclusory allegations of fraud, but has not alleged any actual act of concealment by defendants nor shown that plaintiff herself used due diligence in seeking to dis-

cover her rights. See Dayco Corp., 386 F. Supp. at 547. Plaintiff has not claimed that she was otherwise prevented from filing suit within the allotted time. As the complaint shows clearly on its face that § 1986 claim accrued no later than August 23, 1985, and this action was not filed until December, 1987, the § 1986 claim is barred by the statute of limitations. It would be purely speculative that discovery would reveal any facts material to this issue. Defendants should not be subjected to discovery absent allegations of a plausible theory for recovery. Defendants' motion to dismiss the § 1986 claim is granted.

Fair Credit Reporting Act

Defendants Coburn and Coburn & Meredith move to dismiss plaintiff's claims under the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681, et. seq. Defendants argue that civil liability under the FCRA applies only to "any

consumer reporting agency or user of information," 15 U.S.C.§ 1681(n), and that they do not come within that definition. Plaintiff concedes defendants' reasoning on this point. If defendants furnished false information to credit reporting agencies, no claim is stated under the FCRA because defendants are not subject to the Act's requirements. See Mitchell v. First Nat'l Bank of Dozier, 505 F. Supp. 176, 177 (M.D. Ala. 1981) (one who merely furnishes information not covered by the FCRA). Accordingly, the motion to dismiss is granted as to these claims.

Personal Jurisdiction

Defendant Mozzicato moves to dismiss the complaint, or in the alternative to quash service of the summons, on the grounds that the court lacks jurisdiction over his person. Mozzicato, a citizen and resident of Florida, Complaint P. 14, argues that plaintiff's cause of action does not come within any

provision of the Connecticut long-arm statute, Conn. Gen. Stat. § 52-59(b), and thus there is no basis for this court to assert jurisdiction over him.

Count LXXV of the complaint alleges that Mozzicato engaged in a conspiracy in violation of 42 U.S.C. § 1985 (2) and (3). Count LXXVI alleges that he has violated the FCRA. There is no federal statute authorizing nationwide service of process for either claim. See Safeguard Mut. Ins. Co. v. Maxwell, 53 F.R.D. 116, 117 (D.C. Pa. 1971); 15 U.S.C. § 1681(p) (providing for jurisdiction in "appropriate district court", without authorizing nationwide service). Thus, contrary to plaintiff's contention, the federal claims do not authorize exercise of jurisdiction over the defendant in this district. See Omni Capital Int'l v. Rudolf Wolff & Co., 108 U.S. 404, 409 (1987) (exercise of personal jurisdiction requires authorization for service on defendant). In ab-

sence of a federal statute authorizing service of the complaint upon Mozzicato outside this district, defendant can be served only "under the circumstances and in the manner prescribed in" the Connecticut long-arm statute § 52-59(b). Rule 4(e), Fed. R. Civ. Pro.; see Rule 4(f) (defendant may be served outside territorial limits of state in which district court is held, when authorized by federal statute or rule of procedure); Omni Capital, 108 S. Ct. at 410.

In diversity and federal question actions, before a federal court can properly assert personal jurisdiction over non-resident defendants, the exercise of such jurisdiction must be (1) authorized by the state's long arm statute; and (2) consistent with the requirements of due process.14/

14/Here, defendant Mozzicato does not claim that his contacts with Connecticut are so meager that the exercise of jurisdiction over him would offend due process. See International Shoe Co. v. Washington, 326 U.S. 310 (1945).

See Greene v. Sha-Na-Na, 637 F. Supp. 591,595 (D. Conn. 1986); International Shoe Co., 326 U.S. at 316. Section 52-59(b) provides in relevant part:

> (a) As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-resident individual,...who in person or through an agent: (1) transacts any business within the state; or (2) commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or (3) commits a tortious act outside the state, causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he (A) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (B) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; . . .

Plaintiff alleges that defendant offered her a job with his Florida Company, Complaint P. 70; that he checked plaintiff's employment references, questioned her about derogatory

information received from defendant Connecticut National Bank, and promised to send her a letter about the references, Complaint P.71; and that he later withdrew his offer of employment and refused to send the proposed letter or discuss the matter further. Complaint P. 72. These actions, plaintiff claims, violated 42 U.S.C. § 1985 and 15 U.S.C. §§ 1681n (the FCRA) and constituted the torts of negligence, slander, fraudulent misrepresentation and fraudulent concealment. Plaintiff has not alleged that defendant Mozzicato transacted any business within Connecticut from which her claims arise, nor that he has committed any tortious act within the state. See Complaint P. 70 (referring to defendant's company in Florida). Thus, § 52-59(b)(1) and (2) are inapplicable and jurisdiction may not be exercised over Mozzicato with respect to the slander claim. Accordingly, the slander claim, Count LXXVII, is dismissed for lack of jurisdiction over the defendant. In addi-

tion, jurisdiction may be exercised with respect to the remaining claims only if § 52-59 (b)(3) is satisfied. Thus, it must be shown that defendant regularly solicits business, derives revenue, or engages in a persistent course of conduct in Connecticut, or that expects or he should reasonably expect his act to have consequences in the state and derives substantial revenue from interstate commerce.

Plaintiff argues that discovery is ne cessary to determine whether defendant is subject to suit in Connecticut. Plaintiff represents that she "has reason to believe defendants Mozzicato and Kestell may have been in contact with eachother during 1982, the purpose and result of which were in furtherance of the antitrust conspiracy alleged herein." Memorandum in Opposition (Mozzicato) at 2. No basis for this belief has been alleged however. Moreover, the sufficiency of the antitrust claims asserted

against Mozzicato is doubtful, in view of the dismissal of similar claims against defendants Charter, Young, and Kight. However, plaintiff also claims that Mozzicato has made frequent visits to Connecticut during which he may have committed further unspecified tortious acts in the state. Id. She claims that discovery would reveal such acts, whereupon she would amend her complaint to include them.

Neither party has submitted affidavits or other evidence on the subject of defendant Mozzicato's activities and/or contacts within Connecticut. On this record, it cannot be determined whether Mozzicato may have engaged in a "persistent course of conduct" in Connecticut sufficient for the application of § 52-59(b)(3). Accordingly, plaintiff sh shall be permitted to take discovery of defendant Mozzicato, limited to jurisdictional issues only. She shall complete such discovery on or before November 11, 1988. Mozz-

icato's motion to dismiss is granted as to Count LXXVII and denied without prejudice as to the remaining counts. Defendant may renew his claim upon the completion of the discovery period established herein.

Pendent Jurisdiction[15]/

Plaintiff has asserted numerous claims based upon state law, including claims for violation of the state constitution and for defamation, breach of contract, interference

15/Thecourt notes that all defendants except Right and Mozzicato are, like plaintiff, citizens of the State of Connecticut, and there is no diversity jurisdiction over the great majority of plaintiff's state claims. The remaining defendants have either not yet filed motions to dismiss or have filed motions which were not yet ripe at the time of this ruling was prepared. A review of the federal claims asserted against the remaining defendants suggests that many of these claims may be subject to dismissal on grounds similar to those discussed in this ruling. If so, the considerations expressed herein with respect to pendent jurisdiction would strongly suggest that plaintiff's state claims, to the extent they do not come within diversity jurisdiction, should be dismissed in their entirety. While pendent claims will not be dismissed sua sponte at this juncture, plaintiff is hereby placed on notice that dismissal of all remaining pendent claims will be considered upon motion of

with contract, emotional distress, assault and fraud. Defendants Charter, Young and Kight move the court to decline pendant jurisdiction and dismiss the state claims. Plaintiff is a citizen of Connecticut. Complaint at P. 6. Defendant Charter is a corporation having its principle place of business in Connecticut and defendant Young is a citizen of Connecticut.

Defendant Kight is a citizen of Rhode Island. Complaint P. 9. As to Kight, therefore, the complaint alleges diversity jurisdiction and thus there is no discretion to dismiss the state claims on jurisdictional grounds.

---

the remaining defendants and that her response to their motions to dismiss should address the issue of why the court should not decline to exercise jurisdiction over all remaining pendent state claims, taking into account the principles set forth in Gibbs and applied in Billings v. Stone & Webster, 678 F. Supp. 984 (D. Conn. 1988); see Perez v. Ortiz, No. 88-7002 (2d Cir. June 27, 1988)(dismissal of pendent claims requires notice and opportunity to be heard).

However, as to Charter and Young there is ample reason to decline pendant jurisdiction over the state law claims. Pendent jurisdiction is a doctrine of discretion, not of right. Gibbs, 383 U.S. at 726. Where all federal claims asserted against a defendant are dismissed prior to trial, pendent claims ordinarily should be dismissed as well. See Id. Similarly, pendent state claims should be dismissed where issues of state law otherwise would predominate over the federal claims or where they present opportunity for jury confusion. Gibbs, 383 U.S. at 726-27; Malarkey v. Texaco, Inc. 559 F.Supp. 117, 123 (S.D.N.Y. 1982), aff'd, 704 F. 2d 674 (2d Cir. 1983). Here, plaintiff's only federal claim to survive these motions to dismiss is the claim of § 1985 (2) conspiracy. Sheer numbers suggest that the lone federal claim is likely to be lost in a thicket of state claims, many of which appear to be time-barred. Inevitably, the

presence of the state claims will delay the resolution of the federal issues by increasing the complexity of motions to dismiss and for summary judgment, as well as by protracting discovery.

Moreover, plaintiff's § 1985 claim depends upon proof of conspiracy to obstruct the course of justice, allegedly through an attempt to hinder plaintiff's access to the state unemployment procedures. Her allegations of harassment and discrimination are relevant to this claim only to the extent they are shown to have been undertaken in furtherance of the conspiracy and for the prohibited purpose of obstructing her access to the state procedures. However, the allegations of harassment and discrimination are in themselves the basis of plaintiff's intentional infliction of emotional distress, wrongful termination/breach of contract, and slander claims; these claims do not depend upon a showing of conspiracy or of a particu-

lar unlawful purpose. Thus, the presence of the state claims will substantially expand the scope of the issues at trial. See Gibbs, 383 U.S. at 726. A jury might be confused in distinguishing between harassment, discrimination and eventual termination as torts or a breach of contract in themselves and as acts done in furtherance of an unlaw ful conspiracy to obstruct justice. In the former instance, defendants' purpose would be irrelevant; in the latter, an essential element of the claim. In short, the state claims "present() the possibility of confusion of the issues and complications in the presentation and resolution of the case." Billings, 678 F. Supp. at 987. Further, some of the issues will probably have to be tried separately to avoid confusion and will seriously sap federal judicial resources. As a matter of discretion, jurisdiction over these claims is declined as to defendants Charter and Young.

Conclusion

For the sake of clarity, the resolution of the motions to dismiss is summarized below with respect to individual counts of the complaint:

Defendants	Counts	Ruling
Charter, Young, Kight	1-15	Granted
	16-29	Granted
	30-36	Denied
Wasik, Langer, Philbrick	37-53	Granted
Kestell	70	Granted
Mozzicato	75-80	Denied
Petrus	238-242	Granted
Meredith, Coburn & Meredith	243-244	Granted
	248-249	Granted
	271-272	Granted
	276-277	Granted
Gutman	292	Granted
	294-296	Granted
	297-300	Granted

This ruling has not addressed claims which defendants moved to dismiss but did not argue any grounds in the memoranda in support of

their motions.

SO ORDERED.

Dated at Hartford, Connecticut, this 11th day of October, 1988.

Peter C. Dorsey
United States District
Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

DEBORAH JEAN SAPIA :

-vs- : Civil No. H-87-962(PCD)

CHARTER MARKETING COMPANY et. al. :

March 8, 1989

RULING ON PENDING MOTIONS

Plaintiff's amended complaint, dated May 2, 1988, stands subject to dismissal of Counts 1-29, 37-63, 70, 238-44, 248-49, 271-72, 276-77, 292, 294-300, as ordered on October 11, 1988, and subject to plaintiff's amendment dated December 30, 1988.[1]/

Plaintiff's wholesale onslaught against twenty-six defendants remains a mass of con-

---

1/to expedite the resolution of pending matters and to move the case along, the amendment will be deemed filed. As the amendment P. 167a-d, does not cure the defects previously discussed in the Order of October 11, 1988 at 14-14, and adds nothing to the merits of plaintiff's claims, it is stricken.

fusion, even though the order of October 11, 1988, removed a substantial number of unfounded claims. The nature of the claims discussed in that order will not be repeated. This order will deal with pending motions.

A. Motion to Dismiss Claims Against Defendant Credit Bureau Services (filed September 16, 1988)

This motion is directed against Causes of Action 3, 4, 9, 12, 14, 15, 16, 20 and 21.

This defendant is claimed to have disseminated false information concerning plaintiff to unspecified clients, maintained a file of defamatory matter, denied plaintiff access to her file, delivered to plaintiff a file different than the file she was shown (a contradiction in her claims), and did not take steps to gather accurate information about plaintiff. Complaint Ps. 80-85.

(1) Count 99 (XCIX), Cause of Action 3, alleges a conspiracy in restraint of trade in violation of 15 U.S.C. § 1. This count is

dismissed. There is no allegation of joint action, endeavors, or agreement on the part of Credit, nor are any of the acts alleged as to it conceivably likely to impact on interstate commerce. Plaintiff alleges no facts to show competition on her part with Credit and her personal employment is a market for which antitrust protection is intended.

(2) Count 100 (C), Cause of Action 4, alleges a conspiracy to monopolize in the attempted exclusion of plaintiff from the job market. Credit is not alleged to compete in the job market with plaintiff. Nor are there allegations to support a concert between Credit and any other whereby plain tiff was excluded. There is no allegation on which to find Credit had, or achieved by concert, monopoly power, nor that interstate commerce was affected. Count 100 is dismissed.

(3) Count 101 (CI), Cause of Action 9, alleges Credit's information gathering and

dissemination intended to injure plaintiff in violation of the Fair Credit Reporting Act ("FRCA"), 15 U.S.C. §§ 1681e, 1681g, 1681i, 1681l, 1681n, 1681o. Plaintiff alleges conclusorily Credit's violation of each section. No facts are alleged that would sustain a finding of a violation. No specific publication or dissemination is alleged. No specifically deficient procedures are alleged. No specific reports are identified as having been requested, only her file, which was produced, nor were any specific items identified to be re-investigated as disputed or deleted and no consumer report is alleged to have been issued. Accordingly, this c count is dismissed with leave to plaintiff to amend, within fifteen days(15) hereof, to plead facts sufficient to support the alleged violation.

Count 101 is subject to the two-year limitation within which an action under the FCRA must be brought 15 U.S.C. § 1681p.

Plaintiff alleges against Credit specific conduct in 1982. There is nothing alleged which avoids the time requirement. See Houghton v. Insurance Crime Prevention Institute, 795 F. 2d 322, 324 (3rd Cir. 1986). Accordingly, Count 101 is dismissed with leave to plaintiff to amend, within fifteen (15) days, to rectify the deficiencies noted.

(4) Count 102 (CII), Cause of Action 12, alleges a conspiracy without specification of the conduct by which plaintiff was defamed nor how the separate acts came to be joined by a common purpose or intent. The last publication activities alleged occurred in 1982. Complaint P. 82. Actions for libel and slander are barred after"two years from the date of the act...complained of." Conn. General Statutes § 52-597. Even if the claim is considered one founded upon a tort, the applicable limitations period would be only three years. Conn. Gen. Stat. § 52-577. This case was brought in December 1987, long after

the three years expired. See Ghartey v. St. John's Queens Hosp., slip op. 1671, 1675 (2d Cir. February 28, 1989). Further, no conspirators are specified and no publication is specified. Count 102 is dismissed.

(5) In Count 103 (CIII), Cause of Action 14, libel is alleged without specification of what was published, by whom, or when. Such is conclusory and insufficient as a matter of law. Dismissal is in order. Ordinarily plaintiff would be granted leave to amend to plead sufficiently. However, no acts within the period of limitations, Conn. Gen. Stat. §52-597, are alleged. Thus, an unfilled pleading gap will remain. Count 103 is dismissed.

(6) Count 104 (CIV), Cause of Action 15, alleges willful, reckless, and negligent conduct by defendants. Credit's acts are outside the three year limit of Conn. Gen. Stat. §§ 52-597 (two years for libel or slander). Further, negligence is not a basis for recovery for defamation. Accordingly,

Count 104 is dismissed.

(7) Count 105 (CV), Cause of Action 16, alleges publication of falsehoods concerning plaintiff which interferred with unspecified existing or prospective contractual relations. For want of a specific, binding contract or ongoing business relationship, intentionally interfered with, the right to the economic benefit from which was thus lost, plaintiff may not recover. These elements are not alleged. Nothing alleged as to Credit suggests any action or conduct on its part which meets the requisite elements of this cause of action. Further, Credit's acts are not alleged to have occurred within three years of suit. Conn. Gen. Stat. § 52-577. Count 105 is dismissed.

(8) In count 106 (CVI), Cause of Action 20, plaintiff alleges false representations as to plaintiff, with intent to deceive plaintiff, who relied thereon. The stretch of fraud will not be adequate to reach this claim.

There is no claim of actual misrepresentation; no facts to suggest a fraudulent intent on the part of Credit; and no basis on which to find any reasonable reliance by and detriment to plaintiff from any conduct alleged as to Credit. The allegations are conclusory. They do not state the acts relied on with particularity. Fed. R. Civ. P. 9(b). The allegations of false information in the file Credit allegedly maintained on plaintiff, Ps. 80-85, is totally at odds and inconsistent with the allegation of fraud in P. 245. Further, fraud is also subject to the statute of limitations, Conn. Gen. Stat. § 52-577. No act by Credit occurred within three years of the Complaint. Count 106 is dismissed.

(9) Count 107 (CVII), Cause of Action 21, alleges a failure to disclose to plaintiff, a fraudulent concealment. Rule 9(b) is not complied with -- there is no particularity in the basis of fraud. It is utterly without merit that any non-disclosure could have caused

plaintiff to withhold a suit for five years. Non-disclosure of the name of a former employer is at odds with the allegations of false information. No basis for any continuing duty is alleged. Plaintiff had her file as of May 1982. Therefore, this claim is barred also. Conn. Gen. Stat. § 52-577. Count 107 is dismissed. Accordingly, Counts 99 through 107 are dismissed.

B. Defendant Barry M. Coburn's Motion to Dismiss (filed September 26, 1988)

This motion attacks Causes of Action 1, 2, 8 and 10. Barry M. Coburn was president of the brokerage firm of Coburn & Meredith ("C&M"), by which, in 1978, plaintiff claims to have been employed. Coburn is alleged to have noted the need for permission of plaintiff's prior employer, defendant Gutman, before she could be hired. Coburn is also alleged to have ignored her claim of sexual harassment by one of the firm's employees. Lastly, he is alleged to have told her to reduce her

hours for a subsequent pay period to accomodate an overpayment. With no further facts, she alleges he made reports of defamatory information to others in conspiracy with unnamed co-conspirators, other than perhaps the defendants C & M and Meredith individually.

(1) Count 257 (CCLVII), Cause of Action 1, alleges a violation of the first amendment, freedom of speech and association. There is no allegation that plaintiff's right to speak or associate was interferred with or even threatened. No government action is attributable to or involved with Coburn's alleged conduct. See Rendell-Baker v. Kohn, 457 U.S. 830, 838 (1982); Kuczo v. Western Connecticut Broadcasting Co., 566 F. 2d 384, 387 (2d Cir. 1977). This count is dismissed.

(2) Count 258 (CCLVIII), Cause of Action 2, involves the fifth and fourteenth amendments, alleging deprivation of liberty and property without due process or equal protection. A citizen cannot violate the fifth amend-

ment. Canadian Transport Co. v. United States, 663 F. 2d 1081, 1093 (D.C. Cir. 1980). The fourteenth amendment provides that no "State deprive any person of life, liberty or property without due process of law; nor deny to any person...the equal protection of the laws." Without question, these create no cause of action against an individual in his private capacity. Jackson v. Metropolitan Edison, 419 U.S. 345 (1974); Shelley v. Kraemer, 334 U.S. 1, 9 (1948). Count 258 is dismissed.

(3) Count 262 (CCLXII), Cause of Action 8, alleges creation of an employment atmosphere of sexual harassment constituting constructive discharge, in violation of 42 U.S.C. §§ 2000e-2(a) and 3. Plaintiff has alleged no filing of a complaint with either the federal or state agency, see 29 C.F.R. § 1601.74, as required nor the acquisition of a right to sue letter reflecting the agency's fulfillment of its mediation efforts. Thus, for failure of conditions precedent to suit, within the time

set from the notice of the act complained of, Delaware State College v. Ricks, 449 U.S. 250 (1980), see 42 U.S.C. § 2000e-5(f)(1); 29 C.F.R. § 1601 et seq, et seq., which plaintiff does not allege as she must to invoke properly the jurisdiction of this court, plaintiff may not maintain this action. See Alexander v. Gardner-Denver Co., 415 U.S. 35, 47 (1974) Zipes v. Trans World Airlines, 455 U.S. 385, 393 (1982). Count 262 is dismissed.

(4) Count 263 (CCLXIII) Cause of Action 10, alleges a violation of the FCRA. This defendant is not shown to have issued or used a consumer report. What claimed as to Coburn is not asserted as a matter of personal knowledge. In any event, the FCRA applies to a reporting agency or user of information. 15 U.S.C. § 1681(n). Coburn is not alleged to have been either. This count is dismissed. Accordingly, Counts 257, 258, 262 and 263 are dismissed.

C. Defendants Connecticut National Bank, Oswald Anthony Sherwood and John F. Stockinger's Motion to Dismiss (filed August 15, 1988)

These defendants are described as involved with plaintiff from approximately October 1979 to February 1981 -- Connecticut National Bank ("CNB") as her employer; Sherwood and Stockinger as CNB employees who allegedly acted in relation to plaintiff. Complaint Ps. 116-26. In essence, she alleges inquiry by Stockinger of plaintiff's prior employers, which she believes generated false commentary and/or information which he reported to her as negative. Thereafter, she describes her employment as involving harassment and discrimination in the form of false performance reviews that she was warned not to refute, by whom is not alleged; demands on her for overtime; unsubstantiated accusations of errors, by whom is not alleged; a threat of demotion and a pay cut, by whom is not alleged; harassment of co-employees who affiliated with

her, of whom and by whom is not alleged; unfounded charges of improper conduct, by whom is not alleged, a snipping of her hair by Sherwood; Stockinger's failure to sustain her grievance about the snipping incident and warning her about the incident; placement of defamatory material in plaintiff's file, what and by whom is not alleged; unconstructive counselling in which a Mr. LaPenta (one who has escaped the swath of plaintiff's reach for redress) refused to discuss an adverse employment reference from a prior employer. This scenario is described as directed or controlled by Sherwood and Stockinger and as forcing plaintiff to leave the job, allegedly a constructive discharge achieved by conspiracy against plaintiff's constitutional rights to defame her, for all of which CNB is claimed to be liable.

(1) Counts 184 (CLXXXIV), 198 (CXCVIII), and 213, respectively, charge CNB, Stockinger and Sherwood("movants") with violation of

plaintiff's first amendment rights of association and free speech. For the reasons set forth in B(1) above, these counts are dismissed.

(2) Counts 185 (CLXXXV), 199 (CXCIX), and 214 (CCXIV), respectively, charge movants with violations of plaintiff's fifth and fourteneth amendment rights of due process and equal protection (Cause of Action 2). For the reasons set forth in B(2) above, these counts are dismissed.

(3) Counts 186 (CLXXXVI), 187 (CLXXXVII) and 200 (CC), 201 (CCI), 215 (CCXV), and 216 (CCXVI), respectively, charge movants with antitrust violations, 15 U.S.C. §§ 1, 2, and 15. The same reasons as are set forth in A(1) and (2) above, the circumstances of which are equally applicable to movants, control here. Further, any acts of these defendants occurred in or prior to February, 1981, outside the period of limitations, 15 U.S.C. § 15b. Accordingly, these six counts are dismissed.

(4) Count 188 (CLXXXVIII) asserts, against CNB, conspiracy to violate plaintiff's liberty and property rights, contrary to 42 U.S.C. § 1986 (Cause of Action 7). That statute bars any action not brought "within one year after the cause of action has accrued." 42 U.S.C. § 1986. Plaintiff's employment was terminated in February 1981. This action is clearly outside the time period, Creative Environment, Inc. v. Estabrook, 491 F. Supp. 547, 554 (D. Mass. 1980), aff'd, 680 F. 2d 822 (1st Cir.), cert.denied, 459 U.S 989 (1982), and is dismissed.

(5) Counts 202 (CCII) and 217 (CCXVII) allege violations of 42 U.S.C. § 1985 (2) and (3) against Stockinger and Sherwood (Cause of Action 6). The limitations period, by resort to Connecticut Law, is three years. Burnett v. Gratton, 468 U.S. 42, 49-55 (1984); See Owens v. Ukure, 57 U.S.L.W. 4065 (Jan. 10, 1989), under the tort statute, Conn. Gen. Stst. § 52-577. The last act possibly causative of plain-

tiff's termination could not have been later than February 1981. These counts are dismissed

(6) Counts 189 (CLXXXIX), 203 (CCIII), and 218 (CCXVIII) allege sexual harassment and discrimination contrary to 42 U.S.C. § 2000e-2(a) and 3 (Cause of Action 8). For reasons set forth in B(3) above, these counts are dismissed.

(7) In counts 190 (CXC), 204 (CCIV), and 219 (CCXIX) movants are charged with violations of the FCRA (Cause of Action 10). Actions for redress under that act are subject to a two-year limitation. 15 U.S.C. § 1681p. Plaintiff's allegations of violative conduct on the part of movants are wanting. Indeed, in largest measure movants are alleged to have received information. Their conduct, in any event, is not alleged in any way construable as within two years prior to commencement of this action. Thus, these counts must also be dismissed.

(8) In Counts 192 (CXCII), 193 (CXCIII), 206 (CCVI), 207 (CCVII), 221 (CCXXI), 222 (CCXXII) movants are alleged to have defamed plaintiff (Causes of Action 13, 14) and in Counts 191 (CXCI), 205 (CCV) and 220 (CCXX) are alleged to have conspired to do so (Cause of Action 12). The only conduct alleged is receipt of information and it is dubious that placing information in one's personnel file constitutes publication. Further the conduct occurred in the course of plaintiff's employment and thus in or before February 1981. There is no allegation suggestive of conduct within two years of this action. Thus, the claims for defamation are barred by Conn. Gen. Stat. § 52-597, which should also control the claims of conspiracy. If conspiracy is regarded as a separate tort, it would nonetheless be barred by the three year statute. § 52-577. Accordingly, these counts are dismissed.

(9) In counts 194 (CXCIV), 208 (CCVIII), and 223 (CCXXIII) plaintiff alleges negligence

against all movants (Cause of Action 15), while in counts 209 (CCIX) and 224 (CCXXIV) solely against Stockinger and Sherwood, she alleges willful interference with contractual relations (Cause of Action 16). For the reasons set forth in A(6) and (7) above, these counts are dismissed.

(10) In Count 195 (CXCV), against CNB, plaintiff alleges a willful and malicious violation of plaintiff's implicit contractual relationship, arising from her employment (Cause of Action 17). She alleges no distinct contract, only employment. A breach of contract action is subject to one of two statutes. Section 52-576, Conn. Gen. Stat. is claimed by defendant to control. It bars an action for breach of contract unless brought within six years of the breach. Plaintiff's employment was, by her allegations, terminated in February 1981, and thus her action, not brought until December 14, 1987, is not within the limitation period and is barred. This count

is dismissed.

(11) In counts 210 (CCX) and 225 (CCXXV), plaintiff alleges the intentional infliction of emotional distress (Cause of Action 18) by both Stockinger and Sherwood, while in Count 226 (CCXXVI) she alleges, against Sherwood only, assault (Cause of Action 19). These claims are for torts which could only have occurred, according to the complaint, within her employment and thus in or prior to February 1981. This case was not brought within three years thereof, Conn. Gen. Stat. § 52-577, and are thus barred. These counts are dismissed.

(12) Counts 196 (CXCVI), 211 (CCXI) and 227 (CCXXVII) allege the making of false representations about plaintiff by Sherwood, by Stockinger (who is alleged to have been involved, in an unspecified manner) and by CNB which condoned them (Cause of Action 20). Plaintiff alleges she was thereby forced to terminate her employment. These acts necess-

arily occurred in or prior to 1981. As false statements allegedly made to plaintiff, they can only be claims of misrepresentation. As torts they are barred by Conn. Gen. Stat. § 52-577. These counts are dismissed.

(13) In counts 197 (CXC VII), 212 (CCXII), and 228 (CCXXVIII) plaintiff alleges concealment of false information known to movants (without alleging a basis for an obligation to disclose) such that plaintiff refrained from initiating litigation (Cause of Action 21). Notwithstanding lack of knowledge of this supposed information, she obtained and maintained employment at CNB until she left by reason of complaints arising in the course of that employment. Nonetheless, as a claim of fraud, it is barred by the three year tort limitation, Conn. Gen. Stat. § 52-577. These counts are also dismissed.

In opposition to this motion, plaintiff relies on "equitable, substantive justice" or "well-established case law." Plaintiff's

Memorandum of Law, filed September 1, L988 at 1. She suggests the statutes of limitation should be ignored in the interests of justice, should not be treated separately, and should not be construed narrowly. The presence of questions of fact and the gravity, novelty, importance and scope of her claims as grounds to evade the unchallenged letter of the statutes are noted. She suggests that the counsel she contacted misled her and others, unidentified, deceived her, subjected her to duress or undue influence. Perhaps her accrual of rights of action was not specific in time and in occurrence of damage. She claims a tolling of the statutes without specification of defendants' conduct warranting such. She exhorts the haven of equity as the "Law should be the hand-maiden to Justice" and should open its doors to afford her relief. She importunes the court for credit to her claims of ignorance, fraud, deceit which precluded her ability to sue

earlier and thus she relies on"the federal concealment rule,"
a rule undistinguished by support in any cited legal authority. She notes her efforts to complain about each and every mistreatment thrust upon her. None of these have any legitimate basis, in alleged facts or lawful principle, to excuse her failure to bring suit in timely fashion.

The review of plaintiff's voluminous amended complaint (84 pages by the courts count, as about the only detail plaintiff missed was the pagination, 297 paragraphs, 302 counts, 55 prayers for relief) has given her the benefit of all doubt. It reflects many legal phrases and concepts[2]/ She is now here pro se, but her original and now the amended complaint smack of considerable sophistication and even taints of considerable legal acumen if not guidance.

2/One discovery motion seeks production or "an in camera"inspection by the court. Pleading #134.

She was afforded appcinted counsel who was permitted to withdraw without recording his reasons to prevent a compromise of plaintiff's claims. It is at least reasonable to infer that she failed to use properly the attorney provided to her. She suggests the "case is insufficiently developed," a difficult concept to apply in view of what she has already presented. She has filed the original and now an amended complaint, 9 motions with supporting memoranda, 4 requests for default, discovery requests, compliances and objections responses to motions for more definite statements, opposition memoranda to numerous motions to dismiss. While it is apparent that this is a plaintiff who is not unfamiliar with the law, she has nonetheless been accorded the deference due a pro se claimant. Haines v. Kerner, 404 U.S. 519 (1971). She cites many cases, but inappropriately extracts principles there recited.

However, this complaint does not present equitable claims. Plaintiff has presented a litany of her tribulations, inappropriately in one complaint. See Fed R. Civ. P. 20. Yet, she simply has failed to meet the deadlines imposed by the law. Defendants have rights as does plaintiff and they may not be subjected to actions for damages after they have been entitled to put the past behind them. Assuming she has been done wrong by movants, she presents no lawful reason why defendants' rights to protection from late claims must not be honored. Nothing in the way of rules or cases cited by plaintiff permits, authorizes or requires the court to refuse to honor defendants' right to the protection of the several statutes of limitations.

Accordingly, the case is dismissed in allrespects as to defendants Connecticut National Bank, Oswald Anthony Sherwood, and John F. Stockinger.

D. Defendant John S. Gutman's Supplemental Motion to Dismiss (filed Nov. 29, 1988)

Gutman's prior motion resulted in the dismissal of Counts 292, 294-300. Now he seeks dismissal of Counts 287-91, 293, 301 and 302, thus terminating all claims against him.

Defendant was the president of John Gutman, Inc., by which plaintiff was employed from 1970 to 1975 and from 1976 to January 1977. It is from this employment, and conduct arising from it, that plaintiff's claims against Gutman arise. See Complaint Ps. 132, 133, 134, 140, 150-66. Plaintiff asserts that Gutman provided information in relation to her seeking employment which was obtained on February 27, 1978. Construed broadly, other disclosures may be intended or inferred, but none are specific as to date or recipient.

Plaintiff's claims in counts 287 (CCL XXXVII) (Cause of Action 1), 288 (CCLXXVIII) (Cause of Action 2), 289 (CCLXXXIX)(Cause of Action 3), 290 (CCXC) (Cause of Action 4), 291

(CCXCI) (Cause of Action 6), 293 (CCXCIII) (Cause of Action 10), 301 (CCCI) (Cause of Action 20), and 302 (CCCII) (Cause of Action 21) are, respectively, subject to dismissal for the reasons discussed in paragraph B(1) and (2), A(1) and (2), and C(5), (7), (12) and (13). No anti-competitive acts or attempts to monopolize are alleged as required for antitrust actions. No conspiratorial conduct is alleged in the sense of Gutman having joined with anyone for antitrust or discriminatory purposes. Coincidental conduct is insufficient. Though plaintiff claims an impact on her employment, after Gutman's employment of her she obtained employment and any hostility in such subsequent employment is not the responsibility of Gutman. Gutman is not a consumer nor credit reporting agency. As plaintiff has cited no basis to sustain the foregoing as viable causes of action[3]/,

[3]/ Though given to December 30, 1988, to reply to Gutman's motion, plaintiff has not filed anything further.

as more fully discussed in Section C above, Counts 287-91, 293, 301 and 302 are dismissed.

E. Defendant Frank Mozzicato's Motion to Dismiss (filed December 23, 1988)

Defendant Mozzicato moves for dismissal for want of personal jurisdiction, Fed. R. Civ. P. 12(b)(2), and for failure to state claims against him, Rule 12(b) (6), with respect to the claims set forth in Counts 75 (LXXV) (Cause of Action 6), 76 (LXXVI) (Cause of Action 10), 78 (LXXVIII) (Cause of Action 15), 79 (LXXIX) (Cause of Action 20), and 80 (LXXX) (Cause of Action 21). Count 77 (LXXVII) (Cause of Action 13) was previously dismissed.

Mozzicato is a resident of Florida, where he conducts his business Complaint P. 14. He is plaintiff's uncle and offered her employment in 1982. He noted receipt of allegedly negative information pertaining to plaintiff, but declined to discuss details. He is claimed to have chastised her, but provided no further information, thus alienating her

from her family. Complaint Ps. 70-73. There is no allegation of activity on his part in Connecticut. Though the denial of informa tion may have impacted plaintiff in Connecti-cut, it is insufficient to permit plaintiff to reach him through Connecticut's Long Arm Statute, Conn. Gen. Stat. § 52-59(b); Greene v. Sha Na Na, 637 F. Supp. 59 (D. Conn. 2986), or in the face of a due process challenge. International Shoe Co. v. Washington, 326 U.S. 310 (1945).

Even if this court could exercise personal jurisdiction over Mozzicato, the claims against him, Causes of Action 6, 10, 15, 20 and 21, would be subject to the observations set forth in C(5), (7), and (12) and (13) and A(6) above. In addition, as noted with other defendants, plaintiff's allegations simply allege her concept of grievances against her uncle, but with insufficient allegations of fact on which to premise a § 1985 claim (no conspiratorial acts are alleged), a fair

credit reporting claim (he made no report and was not a reporting agency), a negligence claim (no basis for a duty is alleged), nor found in the making of a representation or in a concealment (no present fact was misrepresented nor was any duty to disclose established).

Accordingly, the five counts against Mozzicato are dismissed.

F. Defendants Charter Marketing Company George Young and Earl Kight, Jr.'s Motion to Dismiss (filed May 5, 1989)

Defendants' prior motion to dismiss counts 1-29 was granted and they now seek dismissal of Counts 30-36, which apply to Kight only. While the prior dismissal of Counts 1-29 removes them from this case and precludes a further dismissal on other grounds as requested by Charter and Young, it is appropriate to note the applicability of the comments herein as to the dismissed claims against Charter and Young.

Counts 30 (XXX) (Cause of Action 12), 31 (XXXI)(Cause of Action 13), 32 (XXXII) (Cause of Action 15, 33 (XXXIII)(Cause of Action 16), 34 (XXXIV) (Cause of Action 18), 35 (XXXV) (Cause of Action 20), and 36 (XXX VI) (Cause of Action 21) are all subject to the same analysis, reasoning and ruling as is set forth in paragraphs A(4) and C(8), A (6) and (&), C(11) A(8) and (9), respectively. Additionally, the pleadings are deficient as no conspiratorial acts are specified, no basis is set forth for a duty (Causes of Action 15, 20 and 21), there are no egregious acts causative of emotional distress, and there is no basis to find a misrepresentation nor concealment. For all the reasons thus pertinent, Counts 30-36 are dismissed.

G. Defendants Jack Smith and Capitol City's Motion to Dismiss (filed December 23, 1988)

Defendants move to dismiss for failure to state a claim, Fed. R. Civ. P. 12(b)(6), as to Causes of Action 3,4,9,12,14,15,16, 20

and 21. Smith was an employee of Capitol, a credit reporting entity. Its file on plaintiff is alleged to have material false information which was not corrected and was disseminated in or prior to May, 1982. Complaint Ps. 74-81. Plaintiff's claims are in Counts 81 (LXXXI) to 98 (XCVIII). They are subject to the analysis, reasoning, and decision set forth in paragraphs A(1)-(9), subject to slight modifications to accomodate different dates of the alleged conduct of these defendants. The claims are also subject to the pleading deficiencies discussed in relation to other defendants, but applicable to these defendants also, including the want of facts suggesting a conspiracy, the lack of anti-competitive or monopolizing conduct causing damage to one's business, the absence of egregious conduct causative of emotional distress, the lack of a basis for finding a duty Cause of Action 15, 20 and 21), the lack of any actual contract being interfered with

(plaintiff was employed and prospective employment is not a contract) and the want of anything on which to premise fraudulent intent Accordingly, the foregoing counts are dismissed.

H. Defendant James Patrick Connolly's Motion for Summary Judgment (filed February 10, 1989)

Defendant has moved for summary judgment on the grounds that the statute of limitations bars suit against him and that there was no attorney-client relationship on which plaintiff can premise her claim. His motion alludes to the complaint without specification of the counts and thus his argument will be considered as to all of the counts in which he is charged. Connolly is an attorney in Bristol, Connecticut, whom plaintiff allegedly contacted, paid a retainer, and arranged to represent her as to her employment problems at Hartford National Bank and Olson Mobeck. He is alleged, over several

months in 1981 and 1982, to have failed to give her advice or to communicate with her, to have canceled appointments, to have failed to act on the wrongs she claimed, to have abandoned her representation, to have failed to commence litigation, to have acted unskill-fully. Counts 108 (CVIII)(Cause of Action 2), 109 (CIX)(Cause of Action 5), 110 (CX)(Cause of Action 6), 111 ((CXI) (Cause of Action 11), 112 (CXII) (Cause of Action 15), 113 (CXIII) (Cause of Action 17), 114 (CXIV), (Cause of Action 20), and 115 (CXV) (Cause of Action 21) assert plaintiff's claims against him.

Connolly supports his motion with his affidavit which recites his first contact with plaintiff in 1980 and discussions of the circumstances of her employment. He made inquiryes about the matters and conferred further with plaintiff, whom he informed that he could not proceed with any action, claim or suit, would not represent her in any matter

against any particular party, and returned her papers to her. His last contact with her was in January 1981. In response, plaintiff filed no affidavit, only her memorandum with a bill from Connolly (per its letterhead) and a letter to him from her. The bill contradicts Connolly as it recites his representation of plaintiff at an unemployment compensation hearing on July 6, 1981, his charge, and the credit applied. The letter, dated November 5, 1980 merely recites her forwarding material from her bank unemployment and solicits his comments. Her memorandum refers to the foregoing and inconsistencies in Connolly's responses to the claims in her complaint. She further asserts, not under oath, Connolly's undertaking to obtain information at Hartford Hospital in September, 1981, his meeting with her in the December 1981 to February 1982 period to discuss her claims. Whether they had merit is in dispute. She notes his"reluctance to pursue litigation."

Memorandum of Plaintiff dated February 22, 1989, at 3. She claims his failure to proceed with litigation is malpractice, as was his failure to communicate with her. She makes the same equitable claims to avoid the statute of limitation ("antidotal to the statute of limitations defense," id. at 4). Yet, she concedes that,though delayed, he discussed her claims and their merits and then refused to bring suit.

Though plaintiff has not filed a statement of contested facts, Local Rule 9(c)2, nor an affidavit, Fed. R. Civ. P. 56 (c), nonethe less, it is apparent that there is evidence that an attorney-client relationship existed and the motion will not be granted on that basis.

Nonetheless:

(1) Plaintiff's claim of due process and equal protection (Count 108) is unavailing and barred by the statute of limitations. See Paragraph B(2) above; Order of October

11, 1988, at 4-5.

(2) Plaintiff's claims under 42 U.S.C. §§ 1983, 1985 (Causes of Action 5 and 6) fail for the reasons set forth in said order. Id. They are time-barred.

(3) Plaintiff's claim of negligence is also time barred. See Paragraph A(6) above. Plaintiff's general claim of representation is curtailed by her statement that Connolly declined to initiate litigation. That resulted in his limitation of the representation and there is no allegation of his undertaking any specific litigation. Indeed, an attorney cannot be bound to have agreed to litigate a claim merely because he has agreed to talk to a client about the matter. He is obliged to inquire and determine the existence of a legal and factual basis for making the claim before he files and serves a complaint. Fed. R. Civ. P. 11. However, any duty arising out of the relationship would, at the latest, have been breached in February 1981. There was

then a disclosure. Nothing is shown to have then remained concealed. Thus, a negligence claim would thereafter be barred if not brought within two years of the injury or, at most, three years of the act or omission complained of. Conn. Gen. Stat. § 52-584.

(4) Plaintiff's claim of breach of contract is not well founded as no contractual undertaking is alleged as to any specific litigation. Further, there is no allegation of a written contract, but only, at best, an executory contract controlled by the three-year limitation. Conn. Gen. Stat. § 52-581. See Campbell v. Rockefeller, 134 Conn. 585 (1948).

(5) Plaintiff's claims of fraudulent misrepresentation and concealment are also barred by Conn. Gen. Stat. § 52-577.

As the foregoing is dispositive of all claims against Connolly except the claim in Count 111 (Cause of Action 11) of violation of the Connecticut Constitution, as to which

there is no federal question jurisdiction nor diversity, Count 111 is also dismissed. Connolly's motion is granted as plaintiff has not demonstrated any question of fact as to the applicability of the pertinent statutes.

I. Defendant James L. Kestell's Motion to Dismiss (Filed February 13, 1989)

Defendant also moves for dismissal for failure to allege a claim against him, Fed. R. Civ. P. 12(b)(6). He is also a lawyer in Hartford with whom plaintiff consulted about her employment problems in November 1981 and who promised legal assistance. However, she alleges that, over the "subsequent three to four months," he was of no help, but discouraged plaintiff from further inquiry, did not inquire himself, gave her no advice, and represented her on July 1, 1982, at a hearing without preparation, ineffectively, obstructive of her efforts, and by stating her inactive pursuit of employment. Thereafter, he refused to communicate

with her.

Count 70 (Cause of Action 15) has been dismissed. Kestell, without citation, now seeks to invoke the statute of limitations to bar plaintiff's claims. In point of fact, Causes of Action 1, 2, 5, 6, 13,17,18, 20 and 21 are subject to dismissal as discussed in paragraphs B(1) and (2), Ruling of October 11, 1988, at 4; Paragraphs C(5), (8), (10), (11) and A(8) and (9) above, and Counts 64-67, 69, 71-74 are subject to dismissal. While the facts alleged differ slightly, much of what is said in Section H above applies also to the claims against Kestell. Likewise, Count 68 (Cause of Action 11), based on the Connecticut Constitution, is dismissed. Accordingly, Kestell's motion is granted and Counts 64-69 and 71-74 are dismissed.[4]/

---

[4]/It is noted that plaintiff has filed no opposition to this motion.

J. Defendants Hartford Hospital, Richard J. Lawson and Marge Ramsdell's Motion for Summary Judgment (filed February 28, 1989)

Defendants have moved for summary judgment on the basis that:

(a) The constitutional claims, Causes of Action 1 and 3, Counts 116,117,129,130,142 and 143 are time barred and do not allege state action.

(b) The claims under 42 U.S.C. §§ 1985, 1986 and Title VII, Counts 120, 121, 1331 134, 146 and 147 (Causes of Action 7 and 8) are time barred and (as to § 1985) assert no requisite state action and (as to Title VI) fail to assert the administrative proceedings which are a prerequisite to any assertion of the jurisdiction of the court.

(c) The complaint alleges no anti-trust injury in Counts 118, 119, 131, 1321 144 and 145 (Causes of Action 3 and 4).

(d) The claims of defamation, conspiracy, infliction of emotional distress, negligence,

interference with contractual relations, breach of contract, misrepresentation, fraudulent concealment and assault, Counts 122-28, 135-41, 148-56 (Causes of Action 12-21) are time barred and should not be the subject of the exercise of pendent jurisdiction.

Plaintiff, on application, was employed by the hospital from June 1, 1981 to November 11, 1981. Lawson and Ramsdell were employed by the hospital. Plaintiff claims they obtained information as to her prior employment, the source of which was false. Her working conditions deteriorated after the unemployment hearing in July 1981 in petty ways. She was negatively evaluated without explanation, but with verbal abuse, only to be constructively discharged (she resigned). The actions not committed by Lawson or Ramsdell are attributed to other employees within the hospital's knowledge and acquiescence. Complaint Ps. 94-106.

The counts listed in (a) above (Causes of Action 1 and 2) are dismissed for the reasons in B(1) and (2) above. The counts in (b) above (Causes of Action 6, 7 and 8) are dismissed for the reasons set forth in paragraphs C(4) and (5), B(3) and the Ruling of October 11, 1988, at 12-16, subject to the adjustment to accomodate the dates of plaintiff's employment by the hospital. The counts in (c) above (Causes of Action 3 and 4) are dismissed for the reasons set forth in paragraphs A(1) and (2) above. The counts listed in (d) above (Causes of Action 12-21) are dismissed for the reasons set forth in paragraphs A(4),C(8),A(5) through (9), and C(10-(12).

K. Defendants Donald E. Wasik, Robert M. Langer and Leon G. Philbrick's Motion for Final Judgment (filed November 21, 1988)

All counts against these defendants were dismissed on October 11, 1988.[5] They were

[5]/This is reflected in the Order of October 11, 1988, at 6-7.

charged in Causes of Actions 1, 2, 5, 6, 11-16, 18, 20-21. The pendent state claims were dismissed, but they were further time barred by the applicable statute of limitations. See Paragraphs C(5), (8), (10)-(12) and A(4)-(9) above; October 11, 1988 Ruling at 4. As to Cause of Action 11, asserted against Wasik (Count 41), Langer (Count 50) and Philbrick(Count 58), as it alleges no federal question and there is no other ground of jurisdiction, it will be dismissed. As there is no reason why a final judgment should not enter in their favor, their motion, as authorized by Fed. R. Civ. P. 54(b), is granted.

L. In Counts 229-37 (CCXXIX - CCXXXVII) plaintiff asserts claims against "Company X" which has not been further identified, has not not been served, has not appeared, and against which there are no factual assertions except that its identity is unknown. Complaint P. 27.

As this case is now fifteen months old,

it is inappropriate that these claims continue.

Accordingly, they are dismissed without prejudice.

M. Plaintiff has named a defendant Willis A. Benham, Jr. the record reflects no service of process upon this person and for the purpose of clearing the record, Counts 157-69, in which he is named Defendant, are dismissed, without prejudice.

Summary

As a result of this order and the order of October 11, 1988, all counts have been dismissed except:

(a) Counts 179-83 (Defendant Olson)

(b) Counts 245-47 and 250-56 (Defendant Coburn & Meredith)

(c) Counts 259-61 and 264-70 (Defendant Coburn)

(d) Counts 273-75 and 278-86 (Defendant Meredith)

SO ORDERED.

Dated at Hartford, Connecticut, this 8th day of March, 1989.

Peter C. Dorsey
United States District Judge

LWP

Conn.
H-87-962
Dorsey(0513)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals, held at the U.S. Courthouse in the city of New York, on the 18th day of December, One thousand nine hundred and eighty nine.

Present:

HONORABLE ELLSWORTH A. VAN GRAAFEILAND,
HONORABLE LAWRENCE W. PIERCE,
HONORABLE ROGER J. MINER,
CIRCUIT JUDGES

----------x

DEBORAH JEAN SAPIA,

PLAINTIFF APPELLANT,

V.

CHARTER MARKETING COMPANY, GEORGE YOUNG, EARL KIGHT, JR., DONALD E. WASIK, ROBERT M. LANGER, LEON G. PHILBRICK, JAMES L. KESTELL, FRANK MOZZICATO, CAPITOL CITY CREDIT CO., JACK SMITH, CREDIT BUREAU SERVICES, JAMES PATRICK CONNOLLY, HARTFORD HOSPITAL, RICHARD J. LAWSON, MARGE RAMSDELL, WILLIS A. BENHAM, Jr., ROLF H. OLSON, CONNECTICUT NATIONAL BANK, JOHN F. STOCKINGER, OSWALD ANTHONY SHERWOOD, COMPANY X, SAMUEL F. PETRUS, COBURN & MEREDITH, INC. BARRY M. COBURN, THOMAS M. MEREDITH AND JOHN S. GUTMAN,

DEFENDANTS,

Filed
December 18,
1989

ORDER
89-7658

CHARTER MARKETING COMPANY, GEORGE YOUNG, EARL KIGHT, JR., HARTFORD HOSPITAL, RICHARD J. LAWSON, MARGE RAMSDELL, CAPITOL CITY CREDIT COMPANY, JOHN S. GUTMAN, JACK SMITH, FRANK MOZZICATO AND CREDIT BUREAU SERVICES,

DEFENDANTS-APPELLEES.

----------x

Deborah Jean Sapia, pro se, appeals from a final judgment entered on June 1,1989, pursuant to an order dated May 30, 1989 and to Fed. R. Civ. P. 54(b) in the United States District Court for the District of Connecticut (Dorsey, J.), dismissing her claims against defendants-appellees. The district court expressed its reasons for the dismissals in two lengthy orders, dated October 11, 1988 and March 8, 1989, respectively.

Sapia commenced this action in December, 1987. On May 2, 1988, she filed an Amended Complaint, which set out twenty-one causes of action against twenty-six defendants. Inter alia, she claimed violations of the first, fifth and fourteenth amendments, the Sherman Act (15 U.S.C. §§ 1 and 2), the Clayton Act (15 U.S.C. § 15), the Fair Credit

Reporting Act (15 U.S.C. § 1681e, 1681g, 1681i, 1681l, 1681n and 1681o), and various civil rights laws (42 U.S.C. § 1983, 1985 and 2000e). Broadly speaking, the gravamen of Sapia's charges is that beginning in 1970 she has been the victim of a widespread conspiracy to deprive her of employment and of the opportunity for employment.

Defendants-appellees include former employers of Sapia, former work supervisors, credit reporting companies, and her uncle. Most of her claims were dismissed by the district court due to an absence of state action or upon statute of limitations grounds. On appeal, Sapia contends (1) that the district court's rulings were based on "fallacious legal reasoning"; (2) that the district court proceedings violated her due process rights; (3) that the district court judge was biased against her; and (4) that the district court mishandled her requests for pro bono counsel.

For the reasons stated in the district court's detailed orders of October 11, 1988 and March 8, 1989, we conclude that the District Court did not err in dismissing Sapia's claims. Further, Sapia's claim of bias is wholly unfounded. "To be disqualifying, (bias) must stem from an extra-judicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." United States v. Grinnell Corp., 384 U.S. 563, 583 (1966). Sapia makes no allegation sufficient to satisfy this standard.

Finally, Sapia contends that the district judge's refusal to appoint a second attorney for her after her first appointed lawyer successfully filed an application to be relieved from his appointment constituted a "gross abuse of discretion." This claim is meritless. Given appellant's apparent inability to properly use the services of her

previously appointed counsel, the district court judge acted well within his discretion in refusing to appoint a second attorney.

The judgment of the district court is AFFIRMED.

HONORABLE ELLSWORTH A. VAN GRAAFEILAND,

HONORABLE LAWRENCE W. PIERCE,

HONORABLE ROGER J. MINER,

Circuit Judges.

N.B. THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN UNRELATED CASES BEFORE THIS OR ANY OTHER COURT.

JON

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 7th day of February, One thousand nine hundred and ninety.

PRESENT: HONORABLE WILLIAM H. TIMBERS, Conn.
HONORABLE JON O. NEWMAN, H87-cv-962
HONORABLE FRANK X. ALTIMARI, Dorsey
Circuit Judges.

DEBORAH JEAN SAPIA,
PLAINTIFF-APPELLANT

v. 89-7850

CONNECTICUT NATIONAL BANK, JOHN F. STOCKINGER, AND OSWALD ANTHONY SHERWOOD,
Defendants-APPELLEES

ORDER

Filed
February 7, 1990

Deborah Jean Sapia appeals pro se from a July 21, 1989, judgment of the District Court for the District of Connecticut (Peter C. Dorsey, Judge), dismissing her

claims against appellees Connecticut National Bank, John F. Stockinger, and Oswald Anthony Sherwood. Judgment was entered pursuant to Fed. R. Civ. P. 54(b). Appellant disputes the District Court's conclusion that her claims were time-barred and contends that in any event grounds existed for tolling the statutes of limitations that apply to her various claims. For reasons fully set forth in Judge Dorsey's thorough opinion, appellant's contentions are without merit.

The judgment of the District Court is affirmed.

William H. Timbers

Jon O. Newman

Frank X. Altimari

Circuit Judges

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.